

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KARI JOHNSON, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 4:07CV1695 CDP
)
AVCO CORP., et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on several motions. I have fully considered the motions, memoranda in support and in opposition, and evidence provided.

I conclude that plaintiffs' motion to compel should be denied, because the material plaintiffs seek is opinion work product, and plaintiffs have not shown extraordinary circumstances justifying its discovery. *See Fed. R. Civ. P. 26; Baker v. General Motors Corp.*, 209 F.3d 1051, 1054 (8th Cir. 2000); *see also Moore v. R.J. Reynolds Tobacco Co.*, 194 F.R.D. 659, 663-64 (S.D. Iowa 2000).

I will grant defendants' motions to amend their answers. They have shown good cause for these amendments, and plaintiffs will not be unduly prejudiced by these defenses, as defendants already plead similar ones in their original and first amended answers. *See Fed. R. Civ. P. 16(b)(4); Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 716-17 (8th Cir. 2008).

Finally, I will grant expert witness Sommar's motion for confidentiality and will order that his logbooks be treated as confidential and that the unredacted logbooks be returned to plaintiffs' counsel. I enter this order because I believe it is in the interests of justice, even though procedurally it is improper. Plaintiffs retained Sommer as an expert witness, and if there are any motions to be filed related to Sommer, plaintiffs should be the ones filing them. I will not deal directly with any retained expert witness, and I caution the parties (and Sommer and his counsel) that it is improper for anyone to ask me to do so. However, as I would have granted the request had plaintiffs made it, I will grant it even though made directly by the witness.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs' motion to compel [#169] is denied. Plaintiffs' motion for leave [#185] to file an amended response is denied as moot.

IT IS FURTHER ORDERED that defendants Avco Corporation's and Textron Incorporated's motion to amend [#172] their first amended answer is granted, and defendant Western Skyways Incorporated's motion to amend [#180] its original answer is granted.

IT IS FURTHER ORDERED that movant Donald Sommar's motions for extension of time to file [#173] and for a determination of confidentiality [#174]

are both granted. Defendants must return any unredacted copies of Sommar's logbook to Sommar, and his logbook is designated as confidential under the terms of the protective order in this case.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 13th day of January, 2010.